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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 321

W. E. McCULLOCH, Auditor of Polk County, Iowa, and HAROLD E. HUGHES, Governor of State of Iowa, GARY L. CAMERON, Secretary of State of State of Iowa, LORNE R. WORTHINGTON, Auditor of State of Iowa, PAUL FRANZENBURG, Treasurer of State of Iowa, KENNETH E. OWEN, Secretary of Agriculture of State of Iowa, in Their Elective Capacities and Also Collectively and Individually As the Executive Council of the State of Iowa, and LAWRENCE F. SCALISE, Attorney General of State of Iowa, and ROBERT D. FULTON, Lieutenant Governor of State of Iowa,

Petitioners,

vs.

ELIZABETH KRUIDENIER, ROBERT R. RIGLER, LAMAR FOSTER, SR., and THOMAS S. HEFLEY,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

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Respondents pray that this United States Supreme Court not issue a Writ of Certiorari to review the judgment of the Supreme Court of the State of Iowa entered in the above entitled case on April 15, 1966.

JURISDICTION

Petitioners' statement of grounds of jurisdiction on page 2 of the petition for writ of certiorari is erroneous because it omits respondents' separate and independent Divisions I and III of their original petition. (R. 3-25, 43-55, 299-301). In these separate divisions respondents prayed that the 1964 and 1965 Iowa temporary reapportionment plans violated Article I, Sec. 6, of the Iowa Constitution. The state court judgment rests on two grounds, one of which is the State Constitutional issue raised by respondents. See 142 N.W.2d 370-371. (Pages A-56—A-58 in petitioners' appendix A).

PETITIONERS' STATEMENT OF QUESTIONS

Petitioners' statement of questions presented is erroneous because: (A) Petitioners omit the questions presented by Divisions I and III of the original petition of respondents, which pertained solely to state constitutional grounds; (B) Petitioners in the last paragraph on their page 3 misstate the record in the case. This record was uncontradicted and showed much more than mere "advantages to voter (sic)" as claimed by petitioners. The record clearly showed invidious discrimination in violation of both the state and Federal constitution: (1) against rural minorities in Polk County (Des Moines); (2) against rural minorities in other multi-member district counties; (3) against citizens desiring to be candidates for the House of Representatives and for the State Senate in Polk County; (4) because of the bloc vote influence of Polk County citizens through eleven representatives and five senators elected at large; (5) because of the length of the ballot where in Polk County fifty candidates ran at large in the June, 1964, State Primary Election for nomination for the Iowa House of Representatives;

(6) because of the lack of uniformity of operation of laws wherein Polk County citizens have the power to vote for eleven representatives and five senators in contrast to citizens of single-member districts; (7) because of the lack of identifiable constituencies of the multi-member district; (8) because of submergence of political minority groups.

Thus, in Divisions I and III of the original petition of respondents, the state court was faced with the question:

> Whether the 1964 and 1965 Iowa Temporary Reapportionment Plans under the record of the case showing the aforementioned invidious discrimination violated Article I, Sec. 6, of the Constitution of the State of Iowa which declares that "All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

In addition, Divisions II and IV of the original petition of respondents presented the question of whether or not under the record showing the aforementioned discrimination the 1964 and 1965 temporary reapportionment plans violated the equal protection clause of Sec. 1 of the Fourteenth Amendment of the Constitution of the United States.

STATEMENT OF CASE

This is a non-partisan declaratory judgment class action brought by respondents to determine the constitutionality under the Constitution of the State of Iowa and the Constitution of the United States of the 1964[1] and 1965[2] Iowa temporary reapportionment plans.

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1. Chapter 1, Acts of the 60th General Assembly (Ex. Sess.) (Iowa 1964).

2. Chapter 88, Acts of the 61st General Assembly (Iowa 1965).

The respondents themselves and the witnesses testifying on behalf of respondents included both Democrats and Republicans, some of whom lived in multi-member districts and some of whom lived in single-member districts, and many of whom had been very active in working toward fair reapportionment in Iowa to give urban voters a full share of representation in the State Legislature.

Although the original petition was commenced in separate divisions, one involving state constitutional grounds and the other Federal constitutional grounds, the newly appointed trial court judge ignored every legal precedent to the contrary and held that the state court had no jurisdiction to determine the constitutionality of state apportionment laws under the State and Federal Constitutions. This decision was reversed by the Supreme Court of Iowa in *Kruidenier* v. *McCulloch,* 136 N.W.2d 546 (Iowa 1965), and the case was remanded for trial before the same trial court.

The evidence of respondents was uncontradicted and sustained the allegations of Divisions I and III that the temporary reapportionment plans violated Article I, Section 6, of the Iowa Constitution.

On November 5, 1965, the same trial court that earlier ruled it had no jurisdiction in the matter once again ruled against respondents on all grounds. This ruling was reversed on April 15, 1966, by the Iowa Supreme Court in *Kruidenier* v. *McCulloch,* 142 N.W.2d 355 (Iowa 1966). In a unanimous opinion the Iowa Supreme Court held that the record showed that in the multi-member district of Polk County the operation of the temporary reapportionment plan violated both Article I, Section 6, of the Iowa Constitution and the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution. At 142 N.W.2d 369 (Petitioners' Appendix A-54), the Iowa

Supreme Court declared: "The 1965 temporary apportionment plan contains objections to both state and federal standards required for equal protection as disclosed by the record in Polk County, the only multi-member district before us in this case."

In addition, by a five to four majority in Division IX-A the court held that the 1965 temporary reapportionment plan did not have equal operation between the two classes of citizens—those who reside in single-member districts and those who reside in multi-member districts—as to all multi-member district counties and therefore violated Article I, Section 6, of the Bill of Rights of the Constitution of Iowa. (142 N.W.2d 370-371, Petitioners' Appendix A-56—A-58).

QUESTIONS PRESENTED

1. Where a state court judgment rests upon two grounds, one of which is non-Federal in character, does the United States Supreme Court have jurisdiction to review if the non-Federal ground is independent of the Federal ground and adequate to support the judgment?

2. Does the judgment of the Supreme Court of Iowa rest upon an independent and adequate non-Federal ground?

REASONS FOR NOT GRANTING THE WRIT

The judgment of the Iowa Supreme Court rests upon two grounds, one of which is Federal and the other non-Federal in character. This non-Federal ground is independent of the Federal ground and is adequate to support the judgment, and, therefore, the writ of certiorari should not be granted. *Jankovich* v. *Indiana Toll Road Comm.*, 379 U.S. 487, 85 S. Ct. 871 (1965).

Division IX-A of the majority opinion (142 N.W.2d 370, petitioners', Appendix A-56) deals wholly with the non-Federal ground on which the judgment rests: Article I, Section 6, of the Bill of Rights of the Iowa Constitution which declares that

> "All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

The final paragraph of Division IX-A of the opinion of the Iowa Supreme Court vividly demonstrates the nature of the independent ground at 142 N.W.2d 371:

> "Any scheme of legislative apportionment in which there are multi-member districts and single-member districts in the same house impairs the right of a resident of a single-member district to have the laws operate uniformly as guaranteed by section 6, Article I of the Constitution of Iowa. Such impairment violates his constitutional rights unless it can be shown such peculiar circumstances exist that a rational plan of apportionment cannot be achieved by using all single-member districts. We do not foreclose the possibility that in some instances there may be legitimate considerations which would make some multi-member districts constitutionally permissible."

Perhaps this *per se* concept of uniformity of operation of laws under the Iowa State Constitution is different from that enunciated by the United States Supreme Court in interpreting the Federal Constitution, albeit that under the record in this case the respondents have shown that the temporary reapportionment plan also violates the Federal Constitution. But regardless of how this United States Supreme Court might decide any Federal constitutional issue, such holding would be moot in light of the fact that the

Iowa State Constitution requires that all legislative districts be single-member districts. And it is the Iowa Supreme Court that is the final arbiter of state constitutional questions, unless its interpretation of the State Constituion violates basic Federal Constitutional rights.

One of the most recent statements of the basic United States Supreme Court rule on accepting jurisdiction is in the case of *Jankovich* v. *Indiana Toll Road Comm.*, 379 U.S. 487, 85 S. Ct. 493 (1965). That case involved the dismissal of a writ of certiorari in an Indiana case where the Supreme Court of Indiana held that an ordinance of the City of Gary, Indiana, was constitutionally invalid because it "purported to authorize an unlawful and unconstitutional apportionment of property rights without payment of compensation". See *Indiana Toll Road Commission* v. *Jankovich,* 193 N.E.2d 237 at 242.

Although there were two independent constitutional grounds raised by the appellants in that case, the opinion of the Indiana Supreme Court did not go nearly as far as the opinion of the Iowa Supreme Court in the case at bar in separating these two grounds. For instance, at 193 N.E.2d 238, in stating the issues the Indiana Supreme Court said:

> ". . . does the ordinance purport to effect a taking of private property for public use in violation of the provisions of Article 1, § 21 of the Indiana Constitution and the Fourteenth Amendment to the Constitution of the United States; . . .'

And at 193 N.E.2d 239, the Indiana Supreme Court also combined the state and federal grounds:

> "The fact that private property may not be taken for public use without compensation is not debatable. However, in determining whether this constitutional

> protection has been violated by the ordinance under consideration, two main issues arise: (1) whether air space above land is a constitutionally protected property right, and (2) whether in the instant case there has been a constitutionally proscribed taking."

In concluding that the Gary, Indiana, ordinance was invalid, the Indiana Supreme Court held that there was "an unlawful and unconstitutional appropriation of property rights", without separating its holdings on state and federal grounds.

Now, let us contrast that case with the Iowa Supreme Court opinion in *Kruidenier* v. *McCulloch*. In the case at bar the pleadings raised, in separate divisions, questions pertaining to the State Constitution. (R. 3-25, 43-55, 299-300, 301). We have separate divisions in the opinion pertaining to the State Constitution. (142 N.W.2d 370-371). And finally, we have a specific conclusion in the opinion that the temporary reapportionment plan violates Article I, Section 6 of the Constitution of Iowa. (142 N.W.2d 375).

Moreover, that the Supreme Court of Iowa intended to rest its judgment on the independent state ground is made clear by the rejection by the majority of the Iowa Court of the language of the dissent of Justice Mason in Division IX of Justice Mason's opinion. Justice Mason stated:

> "We next combine for consideration plaintiffs' contention single-member districts are required by section 6, Article I, of the state constitution and their third proposition the multi-member constituency apportionment scheme of the temporary reapportionment plan violates section 1, Amendment 14 of the federal constitution." (142 N.W.2d 362).

The majority, in Justice Stuart's opinion, rejected this combined consideration of the state and federal grounds

involved and carefully set apart in Division IXA the majority's consideration of the state ground from the majority's consideration in Division IXB of the Federal ground. Therefore, it is clear that the Iowa Court intended to rest its judgment independently on the non-federal ground and that it felt no compulsion from Federal decisions in so resting its judgment. See 142 N.W.2d 370-371.

The rule restated in the Jankovich case has as its fundamental basis the traditional rule laid down in *Murdock* v. *City of Memphis*, 87 U.S. 590 (1874) at 634-635:

> "But in the other cases supposed, why should a judgment be reversed for an error in deciding the Federal question, if the same judgment must be rendered on the other points in the case? And why should this court reverse a judgment which is right on the whole record presented to us; or where the same judgment will be rendered by the court below, after they have corrected the error in the Federal question?
>
> "We have already laid down the rule that we are not authorized to examine these other questions for the purpose of deciding whether the State court ruled correctly on them or not. We are of opinion that on these subjects not embraced in the class of questions stated in the statute, we must receive the decision of the State courts as conclusive."

Then, the United States Supreme Court laid down propositions for asserting jurisdiction, one of which was the inquiry of ". . . whether there is any other matter or issue adjudged by the State court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue." 87 U.S. at 636.

And in *Enterprise Irrig. Dist.* v. *Canal Co.*, 243 U.S. 157 (1917) at 164, the court dismissed a writ of error in a case which involved both Federal and state questions with the following language:

> "Thus, we are concerned with a judgment placed upon two grounds, one involving a federal question and the other not. In such situations our jurisdiction is tested by inquiring whether the non-federal ground is independent of the other and broad enough to sustain the judgment. Where this is the case, the judgment does not depend upon the decision of any federal question and we have no power to disturb it." (Citations omitted).

In *Senn* v. *Tile Layers Union*, 301 U.S. 468 (1936), the Supreme Court of Wisconsin decided issues concerning the application of the State Constitution and the Wisconsin Labor Code. At 301 U.S. 477, this court stated:

> "Those issues involved the construction and application of the statute and the Constitution of the State. As to them the judgment of its highest court is conclusive."

Similarly, the issues in this case involve the construction and application of a state apportionment statute and the Constitution of the State. As to these issues, the judgment of the Iowa Supreme Court is conclusive, unless its judgment has the effect of violating some Federal constitutional rights.

Surely there is nothing in the opinion of the Supreme Court of Iowa which violates any Federal constitutional right of petitioners or of any other Iowa citizen. As a matter of fact, petitioners do not claim that the holding of the Iowa Supreme Court will result in the violation of any rights guaranteed by the Federal Constitution.

Rather, they seek to assert that the decision of the Supreme Court under the record in the case, is based only on Federal constitutional grounds. Such assertion is erroneous.

Division III of plaintiffs' petition pertained to the unconstitutionality of the 1965 temporary reapportionment plan under the Constitution of the State of Iowa. (R. 43-55; R. 301). Paragraph 6 of Division III has twelve subparagraphs alleging specific grounds of unconstitutionality, all of which are supported by uncontradicted evidence in the record.

For instance, Subdivisions A and B pertain solely to the violation of the Iowa Constitution by provisions of the temporary reapportionment plans allowing Polk County citizens to have the right to vote for five state senators and eleven state representatives.

Uncontradicted testimony of Plaintiff Elizabeth Kruidenier, a member of the Iowa Civil Rights Commission and a person who has been very active in Des Moines civic affairs, supports this proposition. Mrs. Kruidenier is an active member of the League of Women Voters and has also lobbied in favor of civil rights and fair employment practice legislation. She testified that as a citizen of Polk County with 11 representatives and 5 senators at large, her "influence carries a great deal more weight" than a lobbyist or citizen from a county that has one representative and one senator. (R. 128-132). No testimony of defendants contradicted this evidence.

Respondents' Subdivision D pertains solely to the lack of uniformity of operation of laws required by the State Constitution of Iowa because of the length of the ballot. The uncontradicted testimony of respondents supporting this proposition included the following:

(1) Plaintiff, Elizabeth Kruidenier, who voted in the Democratic primary, testified that there were 33 Democratic candidates, all running at large. At rallies candidates spoke briefly, a minute or a minute and a half. She said that even as a member of the League of Women Voters who was supposed to be informed, she did not know most of the candidates. From her observation, voters generally were confused. (R. 129-130).

(2) Kate Goldman, a Republican candidate for state representative, was another witness who testified on this issue. Mrs. Goldman is a member of the Iowa Citizens Council on Crime and Delinquency and has also been very active in Des Moines civic affairs. "There was very little opportunity for any kind of a platform experience in getting to the voters simply because of the total number of candidates running in the primary, which was well over 50 for the House and Senate." (R. 208-211; R. 214-215).

(3) Finally, Professor Russell M. Ross, the outstanding authority in Iowa on municipal and state governmental problems, testified concerning the "severe strain on the voters' capacity to distinguish intelligently among the various candidates" that the at large election of multi-member representatives places on the average voter. (R. 268-270).

All of this testimony was uncontradicted by petitioners.

Respondents' Subdivisions E and F pertain solely to the lack of uniformity of operation of laws as shown by bloc voting and the submergence of minority groups.

The record shows that of the 33 candidates for state representative in the Polk County Democratic primary, there were two slates, one with 6 candidates and one with 8 candidates. Of the 14 candidates in the Democratic primary who received the most votes, 13 of the candidates

were on either one of the two slates. As for the fourteenth, he was a former Iowa football star and television and radio commentator for Iowa football games (R. 135), who changed his affiliation from Republican to Democrat within two or three weeks before the primary. (R. 132-134; R. 330-331 and Exhibit 10).

The bloc voting also occurred to wipe out from among the nominees of the Democrats the three candidates from Polk County who did not live in either Des Moines or West Des Moines. Finally, the bloc voting occurred in the general election where, in almost every multi-member representative district, the variance between the highest and lowest candidate of the victorious party approximated 10% or less, and the variance between the highest and lowest candidate of the losing party also approximated 10%. In other words, the candidates of each party ran substantially as a slate. For instance, in Black Hawk County, where 5 representatives were elected at large, the votes of the 5 victorious Democratic candidates ranged from 27,736 to 29,270, and the range of votes for the defeated Republican candidates were from 20,043 to 20,976. (R. 308-309 and Exhibit 11).

State Senator David Stanley testified concerning the invidious discrimination that arises because of bloc voting. (R. 151-152; 156-158). His testimony was also supported by Mrs. Goldman and Mayor Leslie J. (Sam) Wise, mayor of a Polk County rural community of Altoona. (R. 232-235; R. 204).

The uncontradicted record also showed that in Polk County there are only 9,130 more registered Democrats than registered Republicans. Yet, because there were no single member districts, not one Republican was elected as either a State Representative or State Senator. (R. 15-16; R. 100-101). Mrs. Goldman received the highest

number of votes of any Republican candidate for state representative from Polk County—40,544 votes. (R. 217). After the election she analyzed the Polk County vote on a precinct by precinct basis. This analysis showed that in the rectangular area known as the "West Side", going from the north city limits to the south city limits and from the west city limits of 63rd Street east to 30th Street, which embraces 28% of the Polk County vote, Mrs. Goldman ran ahead of every candidate of either party. If these precincts were to be sub-districted, it would be equivalent to three representatives. (R. 216-218). In these 23 contiguous precincts in the rectangular area known as the Des Moines West Side, there are 21,748 registered Republicans compared to 12,396 registered Democrats and 3,459 Independents. (R. 218-220; R. 228).

Similarly, Attorney Robert Mannheimer, a widely known civic leader in Des Moines who ran as one of the Republican candidates for state senator, also received more votes in these 23 West Side precincts than his opponent. (R. 235-237).

Petitioners, on page 7 of the petition for certiorari, misstate this aspect of the record. The evidence was not that "one Republican representative * * * could have been elected from Polk County if a subdistrict had been laid out in a particular area * * *;" according to the uncontradicted record in the case, with the exception of one county, it would be impossible to gerrymander the subdistricts so as to preclude the minority party from at least one representative. (R. 288-289).

Professor Ross and Senator Stanley also testified on this issue. (R. 268-270; R. 162-165).

Mayor Sam Wise of Altoona who himself was a candidate in the Democratic primary, testified, also without contradiction:

"I believe it would be necessary to subdistrict because it's just pretty nearly impossible for anybody in our area or in these rural-oriented areas to both financially and physically to reach the Des Moines voter." (R. 204-207).

Respondents' subdivision H pertained solely to the lack of uniformity of operation of laws faced by the citizen in the single-member district who desires to influence legislation. For instance, Mrs. Goldman lives within a few miles of the Warren County line which separates the multi-member district of Polk County from the single-member district of Warren County. She testified without contradiction:

"As an amateur lobbyist, I have lobbied in about three sessions of the State Legislature trying to influence passage of legislation. I lobbied for revision of the Juvenile Code. I lobbied for work relief for County prisoners. I lobbied for the Child Abuse Bill, and I guess I did a little work on a few others, but those were my primary bills I worked on in the last session. I also worked on the first enactment of the Civil Rights Bill, the Fair Employment Practices Bill, that was in the 60th General Assembly in 1963.

"Then, in 1965 in the last session, I also worked in the area of Civil Rights and lobbied on behalf of establishing the Commission on Human Rights. . . .

"In terms of hours, when I was lobbying for the first enactment of the Fair Employment Practices Bill, that was almost a full-time job when I would go over there on an every-day basis."

She stated that as a person who had been an amateur lobbyist she felt that if a special interest group in Polk County were in favor of legislation and a special interest group in neighboring Warren County were against it, the Polk County special interest group would obviously have

an advantage because it would be able to influence 11 votes for state representative as opposed to the one vote for state representative that the Warren County group could directly influence. (R. 222-226).

Once again, defendants had no evidence to the contrary.

Subdivisions J and K pertained solely to the lack of uniformity of operation of laws faced by would-be candidates for the state legislature in the large multi-member district.

This proposition is almost self-evident. The plaintiff Elizabeth Kruidenier herself considered being a candidate in the Democratic primary, but because of the campaign burdens in a large district she decided not to run. (R. 132). Mrs. Goldman also testified without contradiction on this issue. (R. 222, R. 227-228, R. 232).

According to Mayor Wise of Altoona, "I just didn't have the time or the financial resources to reach the Des Moines voters." (R. 204).

Professor Ross and newspaper publisher Lester J. Hamilton also testified without contradiction on this issue. (R. 265-267, R. 272; R. 254).

Subdivision K showed that the Iowa temporary reapportionment plan operates to minimize and cancel out the voting strength of those portions of the voting population of Polk County not included within the corporate limits of the City of Des Moines and the City of West Des Moines and also operates to minimize and cancel out the voting strength of political elements of the voting population.

The uncontradicted record showed that no Democratic candidate for State Representative from outside the corporate limits of the Cities of Des Moines or West Des Moines

was nominated in the primary. There was no representative from the rural portion of Polk County that was elected in the general election. Also, even though there were only 9,130 more registered Democrats than registered Republicans in Polk County, there is not even one Republican state senator or representative from Polk County with its total population of 266,315. (R. 15-16; R. 100-101; Exhibit 11).

The problems of the rural-oriented element of the portions of Polk County outside the corporate limits of Des Moines and West Des Moines is vividly illustrated by the uncontradicted testimony of newspaper publisher Lester Hamilton from the suburban community of Urbandale and Mayor Leslie J. Wise of Altoona, both of whom were active in the Democratic Party organization.

> "Having watched the political races in Polk County for the last 16 or 17 years, I feel that the present setup leaves an Urbandale voter without a vote." (R. 250).

> "I believe it would be necessary to subdistrict because it's just pretty nearly impossible for anybody in our area or in these rural-oriented areas to both financially and physically to reach the Des Moines voter. To the best of my knowledge, there would be no way to be nominated, other than if you were on some kind of a slate or something like that." (R. 204-205).

Other uncontradicted testimony included that of Senator Stanley (R. 164), and Mrs. Goldman, who in the 23 Des Moines west side precincts which comprise 28% of the total vote in Polk County and where Republicans outnumber the Democrats nearly two to one, received substantially more votes than any other candidate for state representative. (R. 218-220).

Subdivision L showed that in state senatorial districts entitled to more than one senator and in state representa-

tive districts entitled to more than one state representative, the temporary reapportionment plan operates to minimize and cancel out the voting strength of those portions of the voting population not included within the corporate limits of cities in said districts and further operates to minimize and cancel out the voting strength of political elements of the voting population.

On cross-examination, Lieutenant Governor Fulton admitted that in his home county of Black Hawk, which has a total population of 122,482, all elected representatives come from the adjoining cities of Waterloo (71,755) and Cedar Falls (21,195), leaving nearly 30,000 people in other portions of the county without their own representative. As a matter of fact, even all of the defeated Republican candidates were from Waterloo or Cedar Falls. (R. 307-309).

According to Exhibit 11, not one member of a minority political party was elected to the State House of Representatives from any multi-member representative district. The range of votes for defeated and victorious candidates within each party showed the overwhelming tendency of bloc voting. In and of itself, the bloc vote minimizes and cancels out the voting strength of political elements of the voting population.

The foregoing is a statement of some of the highlights of the record upon which the Opinion of the Iowa Supreme Court held that the 1965 temporary reapportionment plan violates Article I, Section 6 of the Bill of Rights of the Iowa Constitution. The record of respondents is totally uncontradicted by petitioners. This record forms an ample foundation of the independent state grounds of the Iowa Supreme Court; and this record makes clear that, during all stages of this case, from the original pleadings to the decision of the Iowa Supreme Court, state grounds for

attack by the respondents and for decision by the Iowa Court were carefully delineated from any Federal questions also involved.

Petitioners complain about the Iowa Supreme Court's interpretation of Article III, Section 37, of the State Constitution and assert, on page 23 of their petition, that it ". . . was either compelled by its interpretation of the equal protection clause of the Fourteenth Amendment, or was not broad enough to support its interpretation". Petitioners extract only a portion of this constitutional provision, which, properly and completely set forth, declares:

> "When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district."

Since this provision was in a single sentence (as contrasted to a somewhat similar provision in the Colorado Constitution in separate sentences), the Iowa Supreme Court held that the entire section was governed by the introductory clause, "Where a Congressional, senatorial, or representative district shall be composed of *two or more counties* . . ." (Emphasis supplied).

Furthermore, the Iowa Supreme Court held that such interpretation harmonized Section 37 of Article III with Section 6 of Article I. Thus, at 142 N.W.2d 361-362, the Iowa Supreme Court declared:

> "Defendants assert and the trial court held this provision prohibits subdividing a county in forming a senatorial or representative district wholly within that county, i. e., what is commonly called subdistricting. Plaintiffs contend, however, section 37 prohibits only dividing a county and attaching the divided part to all

or part of another county or other counties in forming a legislative district. Otherwise stated, the contention is that section 37, supra, does not proscribe establishing more than one district within a single county so long as it is not combined with territory outside the county.

We think the construction of section 37 for which plaintiffs contend is the more reasonable and hence adopt it. There is no division of a county within the meaning of this section as long as a senatorial or representative district is entirely within a specific county. Only if a senatorial or representative district were to take in a portion of two or more counties would there be a 'divided' county in the formation of a district which is prohibited by this section. It is our duty to harmonize this section, if fairly possible, with other provisions of our state constitution, particularly, as applied to the present controversy, section 6, Article I thereof, providing for uniformity and equality in legislative enactments. 16 Am. Jur. 2d, Constitutional Law, sections 66, 67. The construction we give section 37, Article III, supra, gives full effect to both these provisions."

As stated in *Senn* v. *Tile Layers Union,* 301 U.S. 468 (1936), the decision of the state court on matters involving interpretation of the state Constitution is binding on this United States Supreme Court, unless there is a violation of a Federal constitutional right.

Petitioners assert that the Iowa Supreme Court's interpretation of the requirements of Article I, Section 6, is without prior legal foundation. Assuming arguendo this were true, the Iowa Supreme Court is still the final arbiter of state constitutional questions. However, petitioners' assumption is wrong as shown by the recent Iowa Supreme Court decision of *Chicago & Northwestern Railway Co.* v. *Fachman,* 255 Iowa 989, 125 N.W.2d 210 (1963),

which involved an interpretation of Article I, Section 6, of the Iowa Constitution. In a unanimous opinion the Iowa Supreme Court stated at 255 Iowa 996-997, 125 N.W.2d 214:

> "We have said that the provision of Section 6, Article I, of the State Constitution is the 'equality' provision, and that under our system of free constitutional government the courts have a high duty to see to it that legislation does not violate the equality of rights guaranteed by the Constitution. (Citations omitted). . . .
>
> "It is also elementary that membership in a class is determined by the possession of the traits which define that class. Thus, a corporation is a member of a class if and only if it possesses the traits which define a class. Whatever the defining characteristics of a class may be, every member of that class will possess those characteristics. It is often said a reasonable classification is one which includes all who are similarly situated, and none who is not."

Under the record in this case, the decision of the Iowa Supreme Court in *Kruidenier* v. *McCulloch* fell within the framework of this overriding philosophy.

Petitioners complain about the Supreme Court's lack of reference to the findings of the trial court, a newly appointed judge. The trial court ignored the record in this case, just as it ignored every legal precedent to the contrary in holding that state courts have no jurisdiction in determining the constitutionality of state reapportionment laws under the State Constitution.

Petitioners assert that the decision of the Iowa Supreme Court was a "partisan" one. In the first place, the Iowa Supreme Court was unanimous in its ruling pertaining to Polk County. And in the second place, the State of Iowa has a non-partisan judiciary.

Be that as it may, the crucial issues for determination by this Supreme Court are:

1. Where a state court judgment rests upon two grounds, one of which is non-federal in character, does the United States Supreme Court have jurisdiction to review if the non-federal ground is independent and adequate to support the judgment? Respondents submit the answer to this question is, "No."

2. Does the judgment of the Supreme Court of Iowa in this case of *Kruidenier* v. *McCulloch* rest upon an independent and adequate non-federal ground? Respondents submit that the answer to this question is, "Yes."

CONCLUSION

Article I, Section 6 of the Bill of Rights of the Iowa Constitution declares that "all laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Division III of the petition of respondents alleges that the 1965 Iowa temporary reapportionment plan violates Article I, Section 6 of the Constitution of the State of Iowa. The record in this case supports this allegation. The Iowa Supreme Court in a separate division in its opinion specifically held that the 1965 temporary reapportionment plan violated Article I, Section 6 of the Iowa Constitution. This was an independent ground for the decision of the Iowa Supreme Court in this case. There is ample evidence in the record in this case to support this independent ground. It is "the settled rule that where the judgment of a state court rests on two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-

federal ground is independent of the federal ground and adequate to support the judgment.", *Jankovich* v. *Indiana Toll Road Commission*, 379 U.S. 487, 85 S. Ct. 493 (1965). Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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